

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 35 – SB 487

March 2, 2013

SUMMARY OF BILL: Authorizes a judge, at his discretion, to enhance a sentence to twice the sentence imposed if the defendant is convicted of a “violent crime” that was committed with a deadly weapon or in a public place. The defendant must serve 100 percent of the sentence without reduction from sentencing credits.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$48,027,900 /Incarceration *

Assumptions:

- Under Tenn. Code Ann. § 39-17-1301, “crime of violence” includes first and second degree murder, voluntary manslaughter, aggravated rape, rape, especially aggravated robbery, aggravated robbery, burglary, aggravated assault, and aggravated kidnapping.
- According to the Department of Correction (DOC), the 10-year average for admissions of crimes of violence has been as follows:
 - Second degree murder – 133 admissions
 - Voluntary manslaughter – 73.7 admissions
 - Aggravated rape – 23.9 admissions
 - Rape – 53.4 admissions
 - Especially aggravated robbery – 34 admissions
 - Aggravated Robbery – 667.6 admissions
 - Burglary –
 - Auto – 207.5 admissions
 - Building other than habitation – 654.5 admissions
 - Aggravated Assault – 965.7 admissions
 - Aggravated Kidnapping – 29.3 admissions
- The DOC assumes that 50 percent of violent crimes are committed with a deadly weapon or in a public place. It is further assumed that judges will enhance 25 percent of the violent crimes committed with a deadly weapon or in a public place.

Assumptions Related to Second Degree Murder:

- It is assumed that the bill would result in 17 admissions [(133 admissions x 0.5 with deadly weapon or in public place) x 0.25 enhanced at judge’s discretion] for second degree murder per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.

- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for two ($17 \times .1178$) additional admissions for a total of 19 ($17 + 2$).
- The average sentence for second degree murder is 31.7 years. The bill would result in each offender serving 63.4 years. According to the DOC, the average time served for a Class A felony is 15.78 years. The bill would result in each offender serving an additional 47.62 years ($63.4 \text{ years} - 15.78 \text{ years}$).
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($19 \text{ offenders} \times .4911 = 9 \text{ offenders}$).
- According to the DOC, the average operating cost per offender per day for calendar year 2013 is \$64.17.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 10 offenders [$19 \text{ offenders} - 9 \text{ (recidivism discount)}$] serving an additional 47.62 years ($17,393.21 \text{ days}$) for a total of \$1,116,122 ($\$64.17 \times 17,393.21 \text{ days}$). The cost for 10 offenders is \$11,161,220 ($\$1,116,122 \times 10$).

Assumptions Related to Voluntary Manslaughter:

- It is assumed that the bill would result in nine admissions [$(73.7 \text{ admissions} \times 0.5 \text{ with deadly weapon or in public place}) \times 0.25 \text{ enhanced at judge's discretion}$] for voluntary manslaughter per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will account for one ($9 \times .1178$) additional admissions for a total of 10 ($9 + 1$).
- The average sentence for voluntary manslaughter is 9.6 years. The bill would result in each offender serving 19.2 years. According to the DOC, the average time served for a Class C felony is 5.29 years. The bill would result in each offender serving an additional 13.91 years ($19.2 \text{ years} - 5.29 \text{ years}$).
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($10 \text{ offenders} \times .4911 = 5 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on five offenders [$10 \text{ offenders} - 5 \text{ (recidivism discount)}$] serving an additional 13.91 years ($5,080.63 \text{ days}$) for a total of \$326,024 ($\$64.17 \times 5,080.63 \text{ days}$). The cost for five offenders is \$1,630,120 ($\$326,024 \times 5$).

Assumptions Related to Aggravated Rape:

- It is assumed that the bill would result in three admissions [$(23.9 \text{ admissions} \times 0.5 \text{ with deadly weapon or in public place}) \times 0.25 \text{ enhanced at judge's discretion}$] for aggravated

rape per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.

- Population growth will not affect the fiscal impact of this legislation.
- The average sentence for aggravated rape is 24.5 years. The bill would result in each offender serving 49 years. According to the DOC, the average time served for a Class A felony is 15.78 years. The bill would result in each offender serving an additional 33.22 years ($49 - 15.78$).
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($3 \text{ offenders} \times .4911 = 2 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [$3 \text{ offenders} - 2 \text{ (recidivism discount)}$] serving an additional 33.22 years ($12,133.61 \text{ days}$) for a total of \$778,614 ($\$64.17 \times 12,133.61 \text{ days} \times 1 \text{ offender}$).

Assumptions Related to Rape:

- It is assumed that the bill would result in seven admissions [$(53.4 \text{ admissions} \times 0.5 \text{ with deadly weapon or in public place}) \times 0.25 \text{ enhanced at judge's discretion}$] for rape per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will account for one ($7 \times .1178$) additional admissions for a total of eight ($7 + 1$).
- The average sentence for rape is 10.3 years. The bill would result in each offender serving 20.6 years. According to the DOC, the average time served for a Class B felony is 5.29 years. The bill would result in each offender serving an additional 15.31 years.
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($8 \text{ offenders} \times .4911 = 4 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on four offenders [$8 \text{ offenders} - 4 \text{ (recidivism discount)}$] serving an additional 15.31 years ($5,591.98 \text{ days}$) for a total of \$358,837 ($\$64.17 \times 5,591.98 \text{ days}$). The total for four offenders is \$1,435,348 ($\$358,837 \times 4$).

Assumptions Related to Especially Aggravated Robbery:

- It is assumed that the bill would result in four admissions [$(34 \text{ admissions} \times 0.5 \text{ with deadly weapon or in public place}) \times 0.25 \text{ enhanced at judge's discretion}$] for especially aggravated robbery per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will not affect the fiscal impact of this legislation.
- The average sentence for especially aggravated robbery is 19 years. The bill would result in each offender serving 38 years. According to the DOC, the average time served

for a Class A felony is 15.78 years. The bill would result in each offender serving an additional 22.22 years.

- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (4 offenders x .4911 = 2 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders [4 offenders – 2 (recidivism discount)] serving an additional 22.22 years (8,115.86 days) for a total of \$520,795 (\$64.17 x 8,115.86 days). The total for two offenders is \$1,041,590 (\$520,795 x 2).

Assumptions Related to Aggravated Robbery:

- It is assumed that the bill would result in 83 admissions [(667.6 admissions x 0.5 with deadly weapon or in public place) x 0.25 enhanced at judge's discretion] for aggravated robbery per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will account for 10 (83 x .1178) additional admissions for a total of 93 (83 + 10).
- The average sentence for aggravated robbery is 9.2 years. The bill would result in each offender serving 18.4 years. According to the AOC, the average time served for a Class B felony is 5.29 years. The bill would result in each offender serving an additional 13.11 years.
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (93 offenders x .4911 = 46 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 47 offenders [93 offenders – 46 (recidivism discount)] serving an additional 13.11 years (4,788.43 days) for a total of \$307,274 (\$64.17 x 4,788.43 days). The total for 47 offenders is \$14,441,878 (\$307,274 x 47).

Assumptions Related to Burglary:

- Burglary is punishable as a Class D (building other than a habitation) or Class E felony (automobile) under current law.
- It is assumed that the bill would result in 82 admissions [(654.5 admissions x 0.5 with deadly weapon or in public place) x 0.25 enhanced at judge's discretion] for burglary of a building other than a habitation per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will account for 10 (82 x .1178) additional admissions for a total of 92 (82 + 10).
- The average sentence for burglary of a building other than a habitation is 3.4 years. The bill would result in each offender serving 6.8 years. According to the DOC, the average

time served for a Class D felony is 1.8 years. The bill would result in each offender serving an additional 5 years.

- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (92 offenders x .4911 = 45 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 47 offenders [92 offenders – 45 (recidivism discount)] serving an additional 5 years (1,826.25 days) for a total of \$117,190 (\$64.17 x 1,826.25 days). The total for 47 offenders is \$5,507,930 (\$117,190 x 47).
- It is assumed that the bill would result in 26 admissions [(207.5 admissions x 0.5 with deadly weapon or in public place) x 0.25 enhanced at judge's discretion] for burglary of an automobile per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will account for three (26 x .1178) additional admissions for a total of 29 (26 + 3).
- The average sentence for burglary of an automobile is 1.79 years. The bill would result in each offender serving 3.58 years. According to the DOC, the average time served for a Class E felony is 1.21 years. The bill would result in each offender serving an additional 2.37 years.
- According to the DOC, 43.36 percent of offenders will re-offend within three years of their release. A recidivism discount of 43.36 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (29 offenders x .4336 = 13 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 16 offenders [29 offenders – 13 (recidivism discount)] serving an additional 2.37 years (865.64 days) for a total of \$55,548 (\$64.17 x 865.64 days). The total for 16 offenders is \$888,768 (\$55,548 x 16).
- The total incarceration cost for burglary is \$6,396,698 (\$5,507,930 + \$888,768).

Assumptions Related to Aggravated Assault:

- It is assumed that the bill would result in 121 admissions [(965.7 admissions x 0.5 with deadly weapon or in public place) x 0.25 enhanced at judge's discretion] for aggravated assault committed intentionally or knowingly per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will account for 14 (121 x .1178) additional admissions for a total of 135 (121 + 14).
- The average sentence for aggravated assault is 4.6 years. The bill would result in each offender serving 9.2 years. According to the DOC, the average time served for a Class C felony is 2.98 years. The bill would result in each offender serving an additional 6.22 years.
- According to the DOC, 49.11 percent of offenders will re-offend within three years of

their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (135 offenders x .4911 = 66 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 69 offenders [135 offenders – 66 (recidivism discount)] serving an additional 6.22 years (2,271.86 days) for a total of \$145,785 (\$64.17 x 2,271.86 days). The total for 69 offenders is \$10,059,165 (\$145,785 x 69).

Assumptions Related to Aggravated Kidnapping:

- It is assumed that the bill would result in 4 admissions [(29.3 admissions x 0.5 with deadly weapon or in public place) x 0.25 enhanced at judge's discretion] for aggravated kidnapping per year being enhanced by the judge and requiring the defendant to serve no less than twice the sentence imposed.
- Population growth will not affect the fiscal impact of this legislation.
- The average sentence for aggravated kidnapping is 14.2 years. The bill would result in each offender serving 28.4 years. The average time served for a Class B felony is 5.29 years. The bill would result in each offender serving an additional 23.11 years.
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (4 offenders x .4911 = 2 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders [4 offenders – 2 (recidivism discount)] serving an additional 23.11 years (8,440.93 days) for a total of \$541,654 (\$64.17 x 8,440.93 days). The total for two offenders is \$1,083,308 (\$541,654 x 2).

Assumptions Related to Total Incarceration Cost:

- The total incarceration cost is \$48,027,941 (\$11,161,220 + \$1,630,120 + \$778,614 + \$1,435,348 + \$1,041,590 + \$14,441,878 + \$6,396,698 + \$10,059,165 + \$1,083,308)

Assumptions Related to District Attorneys, Public Defenders, and the Courts:

- The bill does not create any new offenses and will not affect the caseloads of either the District Attorneys General Conference or District Public Defenders Conference. Any impact can be accommodated within existing resources without an increased appropriation or reduced reversion.
- According to the Administrative Office of the Courts, any impact on the caseload of the courts can be accommodated within existing resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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